

**Department of Health Care Services
Trailer Bill Legislation**

**612—Third Party Recovery Contracting Authority
FACT SHEET**

Background: Federal and state laws require the Department of Health Care Services (DHCS) to recover Medi-Cal costs from liable third parties, so that Medi-Cal is the payer of last resort. Specifically, California Welfare and Institutions Code (W&I) Sections 14124.70-14124.94 guide DHCS' Personal Injury (PI) and Workers' Compensation (WC) program activities. DHCS works all PI recovery cases in-house and uses a contractor to perform WC recovery activities. In 2015-16, the PI and WC programs collected \$60.4 million and \$2.5 million, respectively, from members' tort actions.

In 1981, the Legislature enacted W&I Code Sections 14124.80 et seq. to introduce a pilot program allowing contracting and outsourcing of some Medi-Cal Third Party Liability (TPL) recoveries. The Legislature required DHCS to enter into contracts with private entities to obtain missing information that was held by private companies on a contingency basis. In the 35 years since the legislative mandate to outsource this recovery activity, the Department of Industrial Relations (DIR) has developed a Workers' Compensation Information System (WCIS) which is a centralized repository of WC claims. This eliminates the need to outsource discovery of WC claims. However, many PI actions remain solely in private sector databases that are unreported to the State. As such, DHCS still needs a contractor to gain information about these unreported PI cases.

Justification for the Change: Proposed amendments address four issues with W&I Code Sections 14124.80 et seq.: 1) Mandated outsourcing of WC; 2) Mandated regional contracts; 3) Indefinite end to contracts; and 4) Technical updates to outdated language.

1. Eliminate Mandated Outsourcing of Workers' Compensation that Conflicts with Government Code

Government Code (GC) Section 19130 guides the State's contracting authority and mandates the use of State staff to complete work unless management can justify contracting work consistent with narrow guidelines. Several portions of W&I Code Sections 14124.80 et seq. mandate outsourcing of WC casework, which is inconsistent with GC 19130 given that State staff have access to the WC claims in the WCIS. DHCS proposes several amendments to eliminate the WC outsourcing mandate, which would allow State staff to perform the recovery work, and increase flexibility in contracting authority to facilitate outsourcing of TPL recovery work only when State staff cannot perform the work consistent with GC 19130.

2. Eliminate Mandate for Regional Contracts

W&I Code Section 14124.82(a) requires that DHCS divide the contracting work into two regional contracts for northern and southern California. Over the last five procurement cycles, DHCS has awarded both regional contracts to the same bidder in each bidding cycle. Due to advances in technology, having two regional contracts offers no tangible benefit and creates additional administrative and procurement costs

for DHCS and contractors. DHCS proposes amendments to allow for more than one contract, but no longer mandate DHCS have two regional contracts.

3. Provide a Finite End to Contracts Consistent with State Contracting Policy

Current law allows a contractor to continue working its existing cases indefinitely. As a result, at least two contracts have lasted as many as 18 years, which is not consistent with State policy, which expects contracts will be limited to a three to five-year term. DHCS proposes amending W&I Code Section 14124.86 to create a finite end to how long a contractor can retain rights to work a case, but ensure a contractor is paid for work already completed on those cases.

4. Eliminate References to the “Pilot Project” and Other Technical Updates

DHCS proposes removing references to the “pilot project” since it expired over 30 years ago (W&I Code Section 14124.80 et seq.). In addition, DHCS proposes repealing the intent language of WIC Sections 14124.80(a-c), because only some of these findings have proven accurate over the past 30 years. DHCS proposes to retain WIC Section 14124.80(d) as proposed WIC Section 14124.81(b) to preclude beneficiaries, their attorneys and related parties from claiming compensation for doing mandatory reporting of filed claims.

In addition, DHCS proposes adding WIC Section 14124.82(c) to provide flexibility in how the contracts are procured. Because prospective bidders may possess different sources of information about filed insurance claims that may not necessarily overlap, the flexibility to offer non-exclusive or non-competitive contracts to multiple contractors offers increased opportunities for recoveries and GF savings.

Furthermore, DHCS proposes to repeal WIC Section 14124.85 to provide flexibility in the work the contracts contain. Contractor authority will be defined within future contracts to mitigate the risk of a contractor working inconsistent with State policy, ensure the State complies with federal law, and reduce susceptibility to lawsuits.

Finally, DHCS proposes to repeal WIC Section 14124.88 because it is no longer necessary and duplicative after removing references to the “pilot project,” mandated workers’ compensation outsourcing, and required regional contracting. Because WIC Section 14124.83 already contains contracting requirements and remains valid, DHCS proposes moving WIC Section 14124.88(d) to that section of law.

Summary of Arguments in Support: This proposal would: eliminate mandated outsourcing of WC to ensure DHCS complies with existing law; remove unnecessary regional contracts; ensure the contractor is operating consistently with DHCS policies; and streamlines the administrative process.

BCP or Estimate Issue # and Title: None.